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# Insurance - Automobile Liability Insurance - "Drive Other Cars" Clause - Exclusion Provision

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INSURANCE — AUTOMOBILE LIABILITY INSURANCE — "DRIVE  
OTHER CARS" CLAUSE — EXCLUSION PROVISION

Defendant and the liability insurer of defendant's truck were sued under the following "Drive Other Cars" provision: ". . . Such insurance as is afforded by this policy . . . applies with respect to any other automobile subject to the following provisions: . . . (b) This insuring agreement does not apply: (1) to any automobile owned by, hired as part of a frequent use of hired automobiles by, or furnished for regular use to the named insured or a member of his household." Plaintiff, a guest passenger, was injured in an accident which occurred while defendant was driving his father's car. At the time of the accident defendant lived with his parents and contributed to the household expenses, but not in fixed or definite sums. The insurer of the father's car paid plaintiff the face value of its policy, but the insurer of defendant's truck refused payment, contending that the father's car was "owned by a member of defendant's household." Plaintiff contended that the inaccurate punctuation of the exclusionary provision rendered it ambiguous, and also that the words, "his household," in the exclusionary provision were ambiguous, thus necessitating the interpretation of the provision in favor of the insured. The trial court found the exclusionary provision to be ambiguous and gave judgment for plaintiff. On appeal, *held*, judgment against defendant insurer reversed.<sup>1</sup> The exclusionary provision was not ambiguous simply because it required a careful and close reading. *Letteff v. Maryland Casualty Co.*, 91 So.2d 123 (La. App. 1956).

Originally, because an automobile owner drove only his own car and very few other persons knew how to operate it, the basic automobile policy covered only the owner when he drove that car.<sup>2</sup> After automobiles became more commonplace, statutory enactments made the owner of an automobile legally responsible even though another was using his car, and the basic policy was expanded so that not only the owner but any other person using the owner's car with his permission was covered.<sup>3</sup> In 1941, it was generally felt that it would be desirable to afford coverage that would follow and protect the insured, and as a result the

1. Judgment against defendant, rendered by the trial court in the amount of \$60,000.00, allowed to stand. *Letteff v. Maryland Cas. Co.*, 91 So.2d 123 (La. App. 1956).

2. Thornbury, *Coverage v. Use of Other Automobiles of the Standard Automobile Combination Policies*, 17 INSURANCE COUNSEL J. 383, 390 (1950).

3. *Ibid.*

"Drive Other Cars" clause with its exclusionary provision was adopted.<sup>4</sup> Although the early "Drive Other Cars" clauses differed slightly in form,<sup>5</sup> the first decisions interpreting these clauses recognized that their common purpose was to provide protection to the insured when he was engaged in the casual use of automobiles other than the one described in the policy.<sup>6</sup> The exclusionary provision within the clause was inserted in order to protect the insurer from a situation in which a family might have two or more cars interchangeably used, but only one automobile insured.<sup>7</sup> The term "household" appeared in these early provisions and was generally accepted as synonymous with the dictionary definition of the word "family."<sup>8</sup> Mere presence under the same roof did not necessarily render all the occupants members of the same "household."<sup>9</sup> In the construction of a rider provision similar to these early exclusionary provisions, it was held that, although a member of the family may not be the *head* of the household, it is, nevertheless, *his household*, i.e., every member of the family has a household although he may not be its head.<sup>10</sup> In dealing with contracts of insurance, definitions of "household" as an abstract term had to give way to the practical considerations of what the parties to the contract intended, in the light of the purpose of the provision.<sup>11</sup>

The purpose of the present "Drive Other Cars" clause has

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4. *Ibid.*

5. For an incomplete, but representative group of these various provisions, see *Lumbermens Mut. Cas. Co. v. Pulsifer*, 41 F. Supp. 249 (S.D. Me. 1941); *Island v. Fireman's Fund Indemnity Co.*, 30 Cal.2d 541, 184 P.2d 153 (1947); *Rodenkirk v. State Farm Mut. Automobile Ins. Co.*, 325 Ill. App. 421, 60 N.E.2d 269 (1945); *Fleming v. Travelers Ins. Co.*, 206 Miss. 284, 39 So.2d 885 (1949).

6. *Lumbermens Mut. Cas. Co. v. Pulsifer*, 41 F. Supp. 249 (S.D. Me. 1941); *Rodenkirk v. State Farm Mut. Automobile Ins. Co.*, 325 Ill. App. 421, 60 N.E.2d 269 (1945). See also *Thornbury, Coverage v. Use of Other Automobiles of the Standard Automobile Combination Policies*, 17 INSURANCE COUNSEL J. 383, 390 (1950).

7. See note 6 *supra*.

8. *Island v. Fireman's Fund Indemnity Co.*, 30 Cal.2d 541, 184 P.2d 153 (1947), and cases cited therein.

9. See *Lumbermens Mut. Cas. Co. v. Pulsifer*, 41 F. Supp. 249 (S.D. Me. 1941), where the court said that where families of father and son were under the father's roof temporarily, there was not one "household" within the meaning of the exclusionary provision. See also *Jackson v. State Farm Mut. Automobile Ins. Co.*, 32 So.2d 52 (La. App. 1947), where in dictum the court said that the mere living together of the parties involved under the circumstances did not make them members of the same household.

10. *Farm Bureau Mut. Automobile Ins. Co. v. Violano*, 123 F.2d 692, 695 (2d Cir. 1941). See also *Tomlyanovich v. Tomlyanovich*, 239 Minn. 250, 58 N.W.2d 855 (1953).

11. *Fleming v. Travelers Ins. Co.*, 206 Miss. 284, 39 So.2d 885, 887 (1949): "Household' cannot be satisfactorily defined as an abstract term. Definition by lexicon supplies elements which are seized upon by opposing interests and isolated from other factors [to] furnish material relevant to contradictory conclusions."

been held to be the same as that of its predecessors.<sup>12</sup> Because of its punctuation, the present exclusionary provision has been attacked, though infrequently, on the ground of ambiguity.<sup>13</sup> In the leading decision dealing with the present provision it was stated that the punctuation did not render the provision ambiguous, but because of a condensation of the phraseology for brevity, the provision did require careful and close reading.<sup>14</sup> Although a subsequent case held the punctuation rendered the "Drive Other Cars" clause ambiguous,<sup>15</sup> a more recent decision interpreting the clause has disregarded this case and reaffirmed the position that the punctuation does not render the clause ambiguous.<sup>16</sup> Before the instant case, the term "household" in the present exclusionary provision had apparently never been interpreted by an appellate court in any jurisdiction.

This is the first Louisiana case dealing with the interpretation of the "Drive Other Cars" clause. Since defendant was driving his father's car, the court was faced with the problem of whether the exclusionary provision would apply *only* to those automobiles, "owned by, hired as part of a frequent use of hired automobiles by, or furnished for regular use to" members of a household of which defendant was the *head*. If such was the intention, it would seem that more restrictive and specific language would be necessary in the provision itself.<sup>17</sup> By not subscribing to such a restricted interpretation, the court, in keeping with the jurisprudence, gave the words of the insurance contract the plain, ordinary, and popular meaning usually attached

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12. "The purpose of the clause is to cover casual or occasional use of other cars. Any other interpretation would subject the insurance company to greatly added risk without the payment of additional premiums." *Vern v. Merchants Mut. Cas. Co.*, 118 N.Y.S.2d 672, 674 (Sup. Ct. 1952). See also *Aler v. Travelers Indemnity Co.*, 92 F. Supp. 620, 623 (D. Md. 1950).

13. *Campbell v. Aetna Cas. and Surety Co.*, 211 F.2d 732 (4th Cir. 1954); *Travelers Indemnity Co. v. Pray*, 204 F.2d 821 (6th Cir. 1953); *Aler v. Travelers Indemnity Co.*, 92 F. Supp. 620 (D. Md. 1950).

14. *Aler v. Travelers Indemnity Co.*, 92 F. Supp. 620 (D. Md. 1950).

15. See *Travelers Indemnity Co. v. Pray*, 204 F.2d 821, 824 (6th Cir. 1953): "In order to make a complete sentence of the questioned provision, grammatical construction would seem to require that the three phrases (1) 'to any automobile owned by,' (2) 'hired as a part of a frequent use of hired automobiles by,' and (3) 'or furnished for regular use to,' have as their object the words 'the named insured or a member of his household' etc. Without inserting a comma (*which is not to be found in the policy*) before the words 'the named insured,' the provision cannot be so construed; for unless the comma be inserted as specified, the first two of the three aforementioned phrases are left dangling without an object."

16. See *Campbell v. Aetna Casualty and Surety Co.*, 211 F.2d 732 (4th Cir. 1954).

17. *Cartier v. Lumbermen's Mut. Cas. Co.*, 84 N.H. 526, 153 Atl. 6 (1931).

to them.<sup>18</sup> In dealing with the punctuation of the exclusionary provision the court was squarely faced with conflicting expert testimony. However, by accepting the opinion that the three phrases of the provision were equal members of a series, each taking the same object, the court applied a well-known rule of English grammar,<sup>19</sup> and the only case which held to the contrary was disregarded.<sup>20</sup> The court's interpretation of the "Drive Other Cars" clause is in accord with the apparent purpose of such a clause; for though the clause was intended to extend some coverage to an insured when driving another automobile, it is questionable that the insurer desired to allow the insured, because of the intimacy of his family, to drive automobiles always available to him and still be covered.<sup>21</sup>

In October of 1956, the Louisiana State Insurance Commission approved a new policy known as the Family Combination Automobile Policy. The older Standard Automobile Combination Policy may now be converted to this new policy in accordance with certain regulations of the commission. Although the new Family Combination Automobile Policy contains no "Drive Other Cars" clause, it provides the same type of coverage.<sup>22</sup> Though the new policy probably extends broader coverage than the old one in some areas, the same result would have been reached had the instant case arisen under it.<sup>23</sup> Thus, by a deletion of possible misleading words, the insurance companies have achieved a clearer statement of the accepted purpose of the older policies' "Drive Other Cars" clause.

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#### OBLIGATIONS — QUANTUM MERUIT

Plaintiff, the owner of two adjoining buildings, authorized defendant, lessee of one building, to store goods temporarily in

18. *Seguin v. Continental Service Life & Health Ins. Co.*, 230 La. 533, 89 So.2d 113 (1956); *McKinney v. American Security Life Ins. Co.*, 76 So.2d 630 (La. App. 1954); *Beard v. Peoples Industrial Life Ins. Co.*, 5 So.2d 340 (La. App. 1941).

19. FORESTER & STEADMAN, WRITING AND THINKING 170, Rule 18c (1941 ed.); HODGES, HARBRACE COLLEGE HANDBOOK 129, Rule 13d.

20. See *Travelers Indemnity Co. v. Pray*, 204 F.2d 821 (6th Cir. 1953).

21. *Fleming v. Travelers Ins. Co.*, 206 Miss. 284, 39 So.2d 885 (1949).

22. This coverage is provided by the "Persons Insured" clause in light of the definition of the terms "non-owned automobile" and "relative."

23. In the new policy a "non-owned automobile" is defined as one not owned by the named insured or any relative. "Relative" is defined in the policy as a relative who is a resident of the same household. Thus, since the car in the instant case was owned by a relative of the named insured within the definitions of the new policy, the automobile could not be considered a "non-owned automobile" and the named insured would not have been covered while driving it.